

## SENATE BILL NO. 205

INTRODUCED BY J. COBB

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING ETHICS; REVISING AND CLARIFYING THE PROHIBITIONS ON POLITICAL ACTIVITY; CLARIFYING THE ENFORCEMENT AUTHORITY OF THE COMMISSIONER OF POLITICAL PRACTICES; CLARIFYING THE PROCEDURE FOR HANDLING AN ETHICS COMPLAINT; PROVIDING FOR JUDICIAL REVIEW OF ETHICS DECISIONS; ELIMINATING THE ETHICS COMMISSION; PROVIDING A PROCEDURE FOR A COMPLAINT INVOLVING A COUNTY ATTORNEY; AMENDING SECTIONS 2-2-102, 2-2-103, 2-2-121, 2-2-136, AND 2-2-144, MCA; AND REPEALING SECTIONS 2-2-125, 2-2-137, 2-2-138, 2-2-139, 2-2-142, AND 2-2-143, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 2-2-102, MCA, is amended to read:

**"2-2-102. Definitions.** As used in this part, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.

(3) (a) "Gift of substantial value" means a gift with a value of \$50 or more for an individual.

(b) The term does not include:

(i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;

(ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in an official capacity;

(iii) educational material directly related to official governmental duties;

(iv) an award publicly presented in recognition of public service; or

(v) educational activity that:

(A) does not place or appear to place the recipient under obligation;

(B) clearly serves the public good; and

(C) is not lavish or extravagant.

(4) "Local government" means a county, a consolidated government, an incorporated city or town, a school district, or a special district.

~~(4)~~(5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.

~~(5)~~(6) "Private interest" means an interest held by an individual that is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

~~(6)~~(7) "Public employee" means:

(a) any temporary or permanent employee of the state ~~or any subdivision of the state;~~

(b) any temporary or permanent employee of a local government;

~~(b)~~(c) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and

~~(c)~~(d) a person under contract to the state.

~~(7)~~(8) "Public officer" includes any state officer and any elected officer of a local government. ~~The term includes an elected officer of any subdivision of the state.~~

(9) "Special district" means a unit of local government, authorized by law to perform a single function or a limited number of functions. The term includes but is not limited to conservation districts, water districts, weed management districts, irrigation districts, fire districts, community college districts, hospital districts, sewer districts, and transportation districts. The term also includes any district or other entity formed by interlocal agreement.

~~(8)~~(10) (a) "State agency" includes:

(i) the state;

- (ii) the legislature and its committees;
  - (iii) all executive departments, boards, commissions, committees, bureaus, and offices;
  - (iv) the university system; and
  - (v) all independent commissions and other establishments of the state government.
- (b) The term does not include the judicial branch.

~~(9)(11)~~ "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102."

**Section 2.** Section 2-2-103, MCA, is amended to read:

**"2-2-103. Public trust -- public duty.** (1) The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out the individual's duties for the benefit of the people of the state.

(2) A public officer, legislator, or public employee whose conduct departs from the person's public duty is liable to the people of the state and is subject to the penalties provided in this part for abuse of the public's trust.

(3) This part sets forth various rules of conduct, the transgression of any of which is a violation of public duty, and various ethical principles, the transgression of any of which must be avoided.

(4) (a) The enforcement of this part for:

(i) state officers, legislators, and state employees is provided for in 2-2-136 ~~and 2-2-137~~;

(ii) legislators, involving legislative acts, is provided for in 2-2-135 and for all other acts is provided for in 2-2-136 ~~and 2-2-137~~;

(iii) local government officers and employees is provided for in 2-2-144.

(b) Any money collected in the civil actions that is not reimbursement for the cost of the action must be deposited in the general fund of the unit of government."

**Section 3.** Section 2-2-121, MCA, is amended to read:

**"2-2-121. Rules of conduct for public officers and public employees.** (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

1 (a) use public time, facilities, equipment, supplies, personnel, or funds for the officer's or  
2 employee's private business purposes;

3 (b) engage in a substantial financial transaction for the officer's or employee's private business  
4 purposes with a person whom the officer or employee inspects or supervises in the course of official  
5 duties;

6 (c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or  
7 other economic benefit from the officer's or employee's agency;

8 (d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic  
9 benefit from any agency;

10 (e) perform an official act directly and substantially affecting to its economic benefit a business  
11 or other undertaking in which the officer or employee either has a substantial financial interest or is  
12 engaged as counsel, consultant, representative, or agent; or

13 (f) solicit or accept employment, or engage in negotiations or meetings to consider employment,  
14 with a person whom the officer or employee regulates in the course of official duties without first giving  
15 written notification to the officer's or employee's supervisor and department director.

16 (3) (a) A public officer or public employee may not use public time, facilities, equipment, supplies,  
17 personnel, or funds for any campaign activity persuading or affecting a political decision to solicit support  
18 for or opposition to any political committee, the nomination or election of any person to public office, or  
19 the passage of a ballot issue unless the use is:

20 ~~(a)~~(i) authorized by law; or

21 ~~(b)~~(ii) properly incidental to another activity required or authorized by law, such as the function of  
22 an elected public official officer, the ~~official's~~ officer's staff, or the legislative staff in the normal course  
23 of duties.

24 (b) As used in this subsection (3), "properly incidental to another activity required or authorized  
25 by law" does not include any activities related to solicitation of support for or opposition to the nomination  
26 or election of a person to public office or political committees organized to support or oppose a candidate  
27 or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to  
28 the activities of a public officer, the public officer's staff, or legislative staff related to determining the  
29 impact of passage or failure of a ballot issue on state or local government operations.

30 (c) This subsection (3) is not intended to restrict the right of a public officer or public employee

1 to express personal political views.

2 (4) A ~~state~~ public officer or public employee may not participate in a proceeding when an  
3 organization of which the public officer or public employee is an officer or director is:

4 (a) involved in a proceeding before the employing ~~state~~ agency that is within the scope of the  
5 public officer's or public employee's job duties; or

6 (b) attempting to influence a local, state, or federal proceeding in which the public officer or public  
7 employee represents the state or local government.

8 (5) A ~~state~~ public officer or ~~state~~ public employee may not engage in any activity, including  
9 lobbying, as defined in 5-7-102, on behalf of an organization of which the public officer or public employee  
10 is a member while performing the public officer's or public employee's job duties. The provisions of this  
11 subsection do not prohibit ~~an~~ a public officer or public employee from performing charitable fundraising  
12 activities if approved by the public officer's or public employee's supervisor or authorized by law.

13 (6) A department head or a member of a quasi-judicial or rulemaking board may perform an official  
14 act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration  
15 of a statute and if the person complies with the disclosure procedures under 2-2-131.

16 (7) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee  
17 unless the member is also a full-time public employee.

18 (8) ~~A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon~~  
19 ~~conviction shall be punished by a fine of not less than \$50 or more than \$1,000, by imprisonment in the~~  
20 ~~county jail for not more than 6 months, or by both. A civil proceeding under 2-2-136 or 2-2-144 does not~~  
21 ~~preclude an action under this subsection.~~ Subsections (2)(b) and (2)(e) do not prevent a member of the  
22 governing body of a local government from performing an official act when the member's participation is  
23 necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the  
24 interest creating the appearance of impropriety prior to performing the official act."

25

26 **Section 4.** Section 2-2-136, MCA, is amended to read:

27 **"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint**  
28 **involving county attorney.** (1) (a) A person alleging a violation of this part by a state officer, legislator, or  
29 state employee may file a complaint with the commissioner of political practices. The commissioner does  
30 not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint.

The commissioner also has jurisdiction over complaints against a county attorney that are referred by a local government review panel pursuant to 2-2-144 OR FILED BY A PERSON DIRECTLY WITH THE COMMISSIONER PURSUANT TO 2-2-144(6). The commissioner shall may request any additional information necessary to make a determination from the complainant or the person who is the subject of the complaint and may issue subpoenas to make an initial determination of whether the complaint states a potential violation of this part.

(b) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of this part. If the issues presented in a complaint have been addressed and decided in a prior decision and the commissioner determines that no additional factual development is necessary, the commissioner may issue a summary decision without holding an informal contested case hearing on the complaint.

~~(b)(c) Unless the complaint is referred to the county attorney under subsection (1)(c) Except as provided in subsection (1)(b), if the commissioner determines that the complaint states a potential violation of this part, the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record established before the commissioner.~~

~~(c) If it appears to the commissioner that a complaint alleges criminal conduct, the commissioner shall stay the proceedings under this section and refer the matter to the appropriate county attorney.~~

(2) If the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than \$1,000, and if the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee. The employing entity of a state employee may take disciplinary action against an employee for a violation of this part, regardless of whether the commissioner makes a recommendation for discipline. The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

~~(3) The decision of the commissioner may be appealed to the ethics commission as provided in 2-2-137. A party may seek judicial review of the commissioner's decision, as provided in chapter 4, part 7, of this title, after a hearing, a dismissal, or a summary decision issued pursuant to subsection (1)(b).~~

(4) Except for records made public in the course of a hearing held under subsection (1) and records that are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are confidential documents and are not open for public inspection. The complainant and the person who is the subject of the complaint shall maintain the confidentiality of the complaint and any related documents released to the parties by the commissioner until the commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing, the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and any related documents must be open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.

(5) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects and status of the case.

~~(5)(6)~~ The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."

**Section 5.** Section 2-2-144, MCA, is amended to read:

**"2-2-144. Enforcement for local government.** (1) Except as provided in ~~subsection~~ subsections (5) and (6), a person alleging a violation of this part by a local government officer or local government employee shall notify the county attorney of the county where the local government is located. The county attorney shall request from the complainant or the person who is the subject of the complaint any information necessary to make a determination concerning the validity of the complaint.

(2) If the county attorney determines that the complaint is justified, the county attorney may bring an action in district court seeking a civil fine of not less than \$50 or more than \$1,000. If the county attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal charges against the officer or employee.

(3) If the county attorney declines to bring an action under this section, the person alleging a violation of this part may file a civil action in district court seeking a civil fine of not less than \$50 or more than \$1,000. In an action filed under this subsection, the court may assess the costs and attorney fees against the person bringing the charges if the court determines that a violation did not occur or against the officer or employee if the court determines that a violation did occur. The court may impose sanctions

1 if the court determines that the action was frivolous or intended for harassment.

2 (4) The employing entity of a local government employee may take disciplinary action against an  
3 employee for a violation of this part.

4 (5) (a) A local government may establish a three-member panel to review complaints alleging  
5 violations of this part by officers or employees of the local government. The local government shall  
6 establish procedures and rules for the panel. The members of the panel may not be officers or employees  
7 of the local government. The panel shall review complaints and may refer to the county attorney  
8 complaints that appear to be substantiated. IF THE COMPLAINT IS AGAINST THE COUNTY ATTORNEY, THE PANEL  
9 SHALL REFER THE MATTER TO THE COMMISSIONER OF POLITICAL PRACTICES AND THE COMPLAINT MUST THEN BE  
10 PROCESSED BY THE COMMISSIONER PURSUANT TO 2-2-136.

11 (b) In a local government that establishes a panel under this subsection (5), a complaint must be  
12 referred to the panel prior to making a complaint to the county attorney.

13 (6) ~~For purposes of this section, "local government" means a county, an incorporated city or town,~~  
14 ~~a consolidated government, or a school district~~ If a local GOVERNMENT review panel has not been  
15 established pursuant to subsection (5), a person alleging a violation of this part by a county attorney shall  
16 file the complaint with the commissioner of political practices pursuant to 2-2-136."

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18 NEW SECTION. **Section 6. Repealer.** Sections 2-2-125, 2-2-137, 2-2-138, 2-2-139, 2-2-142,  
19 and 2-2-143, MCA, are repealed.

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